



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 23 1999

OFFICE OF  
WATER

Mr. Samuel N. Penney  
Chairman  
Nez Perce Tribal Executive Committee  
P.O. Box 305  
Lapwai, Idaho 83540

Dear Mr. Penney:

Thank you for your recent letter expressing concern about the Environmental Protection Agency's (EPA) position to not regulate dams as point sources under the National Pollutant Discharge Elimination System (NPDES) program.

EPA's longstanding view is that water quality conditions that are induced by dams, such as dissolved gas and temperature, generally are not pollutants added to navigable waters from outside of those waters. Thus, dams generally are not required to obtain an NPDES permit. This position was upheld in two judicial challenges. See, National Wildlife Federation v. Gorsuch, 693 F.2d 156 (D.C. Cir. 1982) and National Wildlife Federation v. Consumers Power Co., 862 F.2d 580 (6th Cir. 1988). However, EPA recognizes that dams can have significant water quality impacts. EPA is working with the Army Corps of Engineers, the Bureau of Reclamation, the Bonneville Power Administration, and the National Marine Fisheries Service to see what actions can be taken to address any adverse water quality impacts from the dams in the Lower Snake River that are referenced in your letter.

We will give careful consideration to the issues raised in your letter. Please contact me if you wish to discuss this issue further or you may call Mary Lou Soscia at (503) 326-5873. Thank you for raising this matter to my attention.

Sincerely,

A handwritten signature in black ink that reads "J. Charles Fox".

J. Charles Fox  
Assistant Administrator